

*Bartlett
Birmingham
Per*

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

July 29, 1954
Opinion No. 54-113

TO: The Honorable William A. Sullivan
Arizona State Senator
P. O. Drawer 391
Globe, Arizona

RE: Certificates of nomination.

QUESTIONS: (1) Whether or not Section 55-1006, Arizona Code Annotated, 1939, as amended, in any way repeals Section 55-1021, Arizona Code Annotated, 1939, providing for nomination other than by primary.

(2) In this respect does Section 55-1021 require that a separate certificate of nomination be circulated in each precinct in which signatures are obtained? You will note that the section reads in part "The undersigned, qualified electors of the _____ precinct ...".

(3) If Section 55-1021 is still in full force and effect, then could a person wishing to be nominated by the procedure set up in this section choose as his designation on the ballot the name of either "Independent" or "Non-Partisan" where voters have registered by this designation, but there is no party qualified as such to appear on the ballot in the general election?

(4) Also, can a person registered as a member of one of the qualified political parties, sign the certificate of nomination of a candidate appearing under a different designation

shown on the certificate of nomination? In other words, must the signer of the certificate of nomination be registered under the designation of the candidate?

(5) Can a registered voter who has signed no nomination paper for the office in question and has voted in the primary, but has not voted for a candidate for the particular office for which the certificate of nomination is being circulated, sign the certificate of nomination?

(6) In the choosing of a designation to appear on the ballot at the general election under the procedure of Section 55-1021, may a candidate choose a name in which the name of a recognized party appears as part of the total name, such as "Progressive Democratic" or "Liberal Republican"?

QUESTION NO. 1

Section 55-1006, A.C.A. 1939, as amended by Laws 1947, Chapter 97, Section 1, contains the following provisions:

"55-1006. New political parties.--(a)
A political organization which, at the last preceding general election, cast for its candidates for state office, or for any county or city office, not less than five (5) per cent of the total votes cast in the state or in such county or city, shall be entitled to representation as a political party on the official ballot for state officers, or of such county or local subdivisions.

(b) A new political party shall become eligible for recognition and shall be represented by an official party ballot at the next ensuing general primary election and

accorded a column on the official ballot at the succeeding general election upon the filing with the secretary of state of a petition signed by a number of qualified electors equal to not less than two (2) per cent of the votes cast for governor at the last preceding election in at least five (5) counties. The petition shall: 1. bear the certificate of the county recorder of each such county that he has examined the signatures on the petition and that it contains the signature of qualified electors of the county of which he is the recorder equal to not less than two (2) per cent of the votes cast for governor in such county at the last preceding general election, and 2. be verified by the affidavit of ten qualified electors of the state, asking that the signers thereof be recognized as a new political party. The status as qualified electors of the signers of such affidavit shall be certified by the county recorder of the county in which they reside.

(c) A new political party shall become eligible for recognition and shall be represented by an official party ballot at the next ensuing primary election of a county or city and be placed on the official ballot at the succeeding regular election upon filing with the clerk of the board of supervisors or the city clerk of such county or city a petition signed by a number of qualified electors equal to not less than three (3) per cent of the votes cast for county attorney in the case of a county petition, or for mayor in the case of a city petition. The petition shall bear the certification of the county recorder or the city clerk, as the case may be, that he has examined the signatures on the petition and that it contains the signatures of a number of qualified electors equal to not less than three (3) per cent of the votes cast for county attorney or mayor at the last preceding election, and that it contains the signatures of qualified electors in not less than one-fourth of the election precincts of the city or county.

(d) Any petition for the recognition of

a new political party shall be filed not less than thirty (30) nor more than sixty (60) days prior to the primary election."

Section 55-1021, A.C.A. 1939, provides:

"55-1021. Nomination otherwise than by primary.--Candidates for public office may be nominated otherwise than by primary election or by party committee in the following manner: A certificate of nomination stating the name of the office to be filled, the name and residence of the candidate and other information required by this section shall be filed with the officer with whom primary nomination papers are required to be filed, after the holding of the primary election and within ten (10) days after such primary election. Such certificate shall be signed only by voters who have not signed the nomination papers of a candidate for such office to be voted for at the last primary election, and who have not voted for any candidate for such office at such primary election. Such certificate of nomination shall be in substantially the following form:

'The undersigned, qualified electors of the _____ precinct of _____ county, state of Arizona, do hereby nominate _____, who resides at _____ in the county of _____, as a candidate for the office of _____ at the general (or special as the case may be) election to be held on the _____ day of _____, 19____.

I hereby declare that I have not signed the nomination papers of any candidate to be voted for at the last primary election, and that I did not vote for any candidate for such office at the last primary election, and I do hereby select the following designation under which name the said candidate shall be placed on the official ballot (here insert such designation not exceeding three words in length as the signers may select).
Names of signers. Place of residence. Date of signing.'

Such certificate shall conform as near as may

be to the provisions of this article relating to nomination papers of candidates to be voted for at primary elections, and shall be signed by at least one (1) per cent of the qualified electors of the state, county, or subdivision for which the candidate is nominated. Such percentage shall be determined by the total vote cast for governor in the state or such county or subdivision at the last general election at which a governor was elected."

After survey and examination of the above-quoted statutes, it is the opinion of the Department of Law that Section 55-1006, supra, does not, directly or by implication, repeal Section 55-1021, supra.

Section 55-1006, supra, provides two methods by which a new political party may become eligible for recognition. Subsection (b) indicates the method by which the new party may directly, without any action of its candidates as such, become eligible. Subsection (a) indicates when, as the result of action by its candidates at the last preceding general election, it may become eligible.

Section 55-1021, supra, relates first to the method by which a candidate without party affiliation or candidates of a new political party may be nominated, and second to the manner in which the independent candidate's name or the new party name may be placed upon the ballot. This second part is a necessary correlary and pre-requisite to the recognition of the new party under the provisions of subsection (a) of Section 55-1006.

Therefore, instead of being in conflict, the two sections, wherein they treat of the same subject matter, that is, the recognition of a new political party, are compatible and mutually dependent.

QUESTION NO. 2

Section 55-1021, supra, provides in part that "Such certificate shall conform as near as may be to the provisions of this article relating to nomination papers of candidates to be voted for at primary elections,". Such being the case, any Court decision dealing with nomination papers of candidates would undoubtedly be of significance. In the very recent case of ADAMS vs. BOLIN, (1954) _____ Ariz. _____, 271 P. 2d 472, the Arizona Supreme Court was confronted with substantially the same fact situation as given in Question No. 2. The Court

stated that it was confronted with the following question:

"The primary question involved is as to the legal sufficiency of petitioner's nomination papers. It is the contention of the respondent that the petitions attempted to be filed with him by petitioner were defective in that they were not in the exact form prescribed by statute, in that no precinct was named therein and electors of different precincts had signed on the same nomination sheet and the signers had not designated their precinct by its particular name. * * * (Emphasis supplied)

In holding that it was unnecessary for electors of different precincts to designate their particular precinct by name, the Court stated at page 473:

"The nomination papers circulated by petitioner for signatures of electors and then presented to respondent ARE IN THE EXACT FORM OF THE STATUTE, supra, save that in blank space (1), supra, there was inserted the words 'hereinafter designated' instead of the name or number of a particular precinct. Since each signer of the petition must state his address, this effectively indicates his precinct. * * * (Emphasis supplied, italics capitalized)

Also, at page 476 of the ADAMS vs. BOLIN case, supra, the Court made the following observation:

"In the light of what has been said we have no hesitancy in holding that the 'nomination papers' presented to respondent were legally sufficient and a refusal to accept them as being defective, in that they did not comply with Section 55-1004, as amended, supra, was not justified. We further hold that filling in the blank space on the form prescribed by statute, with the words 'hereinafter designated' before the word 'precinct' (or words of similar import such as 'the precinct DESIGNATED or INDICATED by my address') is full compliance with the intent and purpose of the statute, and that

there is no legal impediment prohibiting qualified electors from different precincts signing the same 'nomination paper'." (*Italics capitalized*)

In view of the statutory mandate above-quoted, and the holding in the ADAMS case, supra, it is the opinion of the Department of Law that a separate certificate of nomination need not be circulated in each precinct in which signatures are obtained.

QUESTION NO. 3

Reference is hereby made to the form of the certificate of nomination as set forth in Section 55-1021, supra, (Question No. 1) especially that portion of said form which provides "I do hereby select the following designation under which name the said candidate shall be placed on the official ballot. (here insert such designation not exceeding three words in length as signers may select)."

Section 55-1022, A.C.A. 1939, states:

"55-1022. Column for 'other candidates.'--- The names of all candidates nominated under the provisions of section 1293 (§ 55-1021) shall be placed on the official ballot in a single column at the right of the party columns, bearing the heading, in bold-face type: 'Other candidates,' and immediately under such heading the words: 'Vote separately for each office.' Immediately above the name of each candidate, in parenthesis, shall be printed the designation prescribed in the candidate's certificate of nomination."

It is, therefore, the opinion of the Department of Law that while there may not be in existence a party known as the "Independent Party" or the "Non-partisan Party", nevertheless, Section 55-1021, supra, was enacted as a method whereby an individual seeking to have his name placed on the official general election ballot could do so, notwithstanding the eligibility of the specific political group which he represents to appear as an official political party in the State of Arizona. The wording of the statutes heretofore quoted, appear to give sufficient authority for the designation of a candidate as an "Independent" or "Non-partisan" candidate.

Adding emphasis to our position in this regard, we should like to quote from the case of *PARTRIDGE v. DEVOTO*, Calif. 1905, 82 P. 775. The Supreme Court of California held therein as follows:

"The purpose of the statutory provision concerning nominations by certificate is twofold. It is intended, in the first place, to permit absolutely independent nominations of persons as candidates who have no political affiliations with any party, and who do not intend to form a party, but who become candidates for reasons personal to themselves or to those who sign the certificates. In the second place, it is intended to facilitate the formation of new political parties, enabling such an organization to get a place on the ballot, and if, at the ensuing election, it receives as much as 3 per cent of the total vote, it thereafter takes its place as a regular and recognized political party, entitled to nominate candidates by a convention.* * *"

QUESTION NO. 4

A review of Section 55-1021, supra, indicates that there are certain specific requirements for the eligibility of voters who wish to sign certificates of nomination. They are as follows:

1. The certificate shall be signed only by voters who have not signed the nomination papers of a candidate for such office to be voted for at the last primary election.
2. The signers shall not have voted for any candidate for such office at such primary election.
3. Signers must be qualified electors.

We have been unable to find any provision which would require such signers to be registered under the designation of the candidate whose certificate is being circulated.

Further, provisions of Section 55-1021, supra, state that certificates of nomination shall conform, as near as may be, to the provisions of the law relating to nomination papers of candidates (Sections 55-1003, 55-1004, 55-1005, A.C.A. 1939, as amended). Carried to its logical conclusion, such a statutory directive would mean that the applicable portions of the nomination paper sections would by reference be included in Section

55-1021, supra. Section 55-1004, A.C.A. 1939, as amended, provides in part as follows:

"55-1004. Nomination papers.--

(b) * * * To each nomination paper shall be appended a certificate by a qualified elector entitled to vote for the candidate whose nomination paper he certifies, stating that to the best of his knowledge and belief all signers thereof are qualified electors of the precinct given as their residence, and that each signer is a member of the party the nomination of which the candidate whose name appears on the nomination paper is seeking. * * * (Emphasis supplied)

Thus, the certificate of nomination under Section 55-1021, supra, would require a similar statement if that were the intent of said section, and it would, therefore, follow that each signer of a certificate of nomination would have to be a member of the same party as the party to which the proposed candidate belonged.

It is the opinion of this office, however, that the requirements of Section 55-1021, supra, were not intended to be carried to such an extreme and that the form of the certificate of nomination set forth therein would be sufficient if substantially followed. As we have previously noted, no requirement appears therein which would necessitate the signing of such a certificate by only those persons who are registered under the designation of the candidate.

QUESTION NO. 5

In answer to this question, reference must again be made to Section 55-1021, supra. It will be noted from a reading of that section that a certificate of nomination shall be signed only by voters who; (1) Have not signed the nomination papers of a candidate for such office to be voted for at the last primary election, and (2) have not voted for any candidate for such office at such primary election. Therefore, if a registered voter has voted in the primary but did not vote for a candidate for the particular office for which the certificate of nomination is being circulated, then such an elector would be qualified to sign the certificate.

QUESTION NO. 6

In answering the sixth question, we refer to our discussion

The Honorable William A. Sullivan
Arizona State Senator

July 29, 1954
Page Ten

as it appears in our answer to Question No. 3, supra, where we dealt with the designation of the candidate as an "independent" or a "non-partisan." The distinction between Question No. 3 and Question No. 6 is that the designation now contains a name in which the name of a recognized political party appears as a part of the total name.

There is no statutory provision in the laws of the State of Arizona which would prohibit such use of a recognized party name or a part thereof, and the requirements of Section 55-1021, supra, vest in the signers and the candidate the power to prescribe the designation of their choice, the only limitation being that the designation shall not exceed three (3) words in length.

Many states have seen fit to provide that on such certificates of nomination the candidate is prohibited from using the name of an existing political party or part thereof as his designation; for instance, Section 137, subdivision 3, of the New York Election Laws contains the following provision:

"The name selected for the independent body making the nomination shall not include the name or part of the name or an abbreviation of the name or part of the name of a then existing party."

The laws of several other states, including California, contain a section substantially similar to that adopted by New York. Arizona has not enacted such legislation.

We should like to point out, however, that while there is no statutory prohibition against the use of the name of an existing political party, if the name were employed for the purpose of confusing or deceiving the voters of the state such use would definitely be beyond the bounds of propriety and would no doubt be looked upon with disfavor by both the courts and the political party whose name has been used as a designation or part of the designation on the certificate of nomination, or subsequent ballot.

ROSS F. JONES
The Attorney General

JAMES P. BARTLETT
Special Assistant to
The Attorney General